

**REMARKS**

**I. Claim Status**

Claims 1-117 are pending. Without prejudice or disclaimer, claims 25-78 and 108-117 are withdrawn as non-elected in response to the Office Action (Restriction/Election Requirement) of December 14, 2006. No claims are amended herein.

**II. Priority**

Applicants submit herewith certified English translations of U.S. Provisional Application No. 60/412,853, filed September 24, 2002; U.S. Provisional Application No. 60/418,345, filed October 16, 2002; U.S. Provisional Application No. 60/418,357, filed October 16, 2002; U.S. Provisional Application No. 60/412,854, filed October 16, 2002; and U.S. Provisional Application No. 60/412,855, filed October 16, 2002, from which U.S. Patent Application No. 10/654,907 claims priority.

Applicants also note that a specific reference to the aforementioned U.S. provisional applications has already been made in the Initial Information Data Sheet filed concurrently with the applications.

Furthermore, Applicants wish to point out that this application also claims the benefit of the filing date of French Patent Application No. 02 11096, filed September 6, 2002; French Patent Application No. 02 11097, filed September 6, 2002; French Patent Application No. 02 11104, filed September 6, 2002; French Patent Application No. 02 12097, filed September 30, 2002; and French Patent Application No. 02 12098, filed September 30, 2002 (collectively, "French priority documents"), as demonstrated by the submissions on September 5, 2003 (Applicants submitted a Claim for Priority to these

French priority documents, and also submitted certified copies of the French priority documents). To date, the Examiner has not acknowledged receipt of the certified French priority documents. Thus, Applicants respectfully request that the Examiner acknowledge receipt of the certified French priority documents in the next paper from the Office.

**III. Rejection Under 35 U.S.C. § 102**

The Examiner rejects claims 1-24, 85-100, and 102-107 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,875,245 to Pavlin ("Pavlin"). See Feb. 26, 2008, Office Action at 4-5.

Applicants respectfully traverse for at least the following reason.

Applicants respectfully submit that the Examiner's reliance on Pavlin as § 102(e) prior art to the instant application is misplaced. In particular, Applicants' application claims priority to:

U.S. Provisional Application No. 60/412,853, filed September 24, 2002;  
U.S. Provisional Application No. 60/418,345, filed October 16, 2002;  
U.S. Provisional Application No. 60/418,357, filed October 16, 2002;  
U.S. Provisional Application No. 60/412,854, filed October 16, 2002;  
U.S. Provisional Application No. 60/412,855, filed October 16, 2002;  
French Patent Application No. 02 11096, filed September 6, 2002;  
French Patent Application No. 02 11097, filed September 6, 2002;  
French Patent Application No. 02 11104, filed September 6, 2002;  
French Patent Application No. 02 12097, filed September 30, 2002; and  
French Patent Application No. 02 12098, filed September 30, 2002.

Thus, Applicants effective date of invention is no later than September 30, 2002.

Pavlin was filed April 22, 2003, and published April 5, 2005. Pavlin is a continuation-in-part of U.S. Patent No. 6,552,160 ("the '160 patent"), filed on May 14, 2001. However, the subject matter used in the Examiner's rejection was not disclosed in the '160 patent. Specifically, the Examiner relies on Table 15 of Pavlin for the § 102(e) rejection (see Feb. 26, 2008, Office Action at 4-5), but this subject matter is not disclosed in the '160 patent. Thus, Pavlin's effective filing date is April 22, 2003, for purposes of the Examiner's § 102(e) rejection. Thus, the May 14, 2001, filing date cannot be relied upon for purposes of § 102(e) See M.P.E.P. § 2136.04(IV) ("[T]he subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e).").

Because Pavlin's effective filing date is April 22, 2003, for purposes of the Examiner's rejection, and Applicants effective invention date is no later than September 30, 2002, Pavlin is not § 102(e) prior art to the instant application.<sup>1</sup> Accordingly, Applicants respectfully submit that the rejection should be withdrawn.

#### **IV. Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 1-24 and 79-107 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pavlin. See Feb. 26, 2008, Office Action at 5-6.

Applicants respectfully traverse for at least the following reason.

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<sup>1</sup> Section 102(e)(2) states: "A person shall be entitled to a patent unless - . . . a patent granted on an application for patent by another filed in the United States before the invention by the application for patent." (Emphasis added). In the present case, the effective invention date is the French priority date.

The Examiner's reliance on Pavlin as prior art is misplaced. For art to be relied upon under 35 U.S.C. § 103 as the basis for an obviousness rejection, the art must first qualify as prior art under the definition of 35 U.S.C. § 102. Here, however, for the reasons discussed above, Pavlin is not prior art under § 102(e), or any other section of § 102.

Because Pavlin is not prior art to the instant application, Applicants respectfully submit that the Examiner cannot rely upon Pavlin to support the pending § 103 rejection.

Accordingly, Applicants respectfully submit that the rejection is in error and should be withdrawn.

#### **CONCLUSION**

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any outstanding issues, she is respectfully urged to contact Applicants' undersigned counsel at (202) 408-4152.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: May 21, 2008

By: 

Aaron M. Raphael  
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**ATTACHMENTS:** Certified English translations of U.S. Provisional Application No. 60/412,853, filed September 24, 2002; U.S. Provisional Application No. 60/418,345, filed October 16, 2002; U.S. Provisional Application No. 60/418,357, filed October 16, 2002; U.S. Provisional Application No. 60/412,854, filed October 16, 2002; and U.S. Provisional Application No. 60/412,855, filed October 16, 2002. Please note that the certified English translations of these provisional applications are being e-filed in the order that they are listed here.